IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE NINETEENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE Mr. JUSTICE C.V.RAMULU

WRIT PETITION No.22808 of 2001

Between:

M.Venkata Reddy, S/o. Jali Reddy.
R/o. Ramnagar, 10th line, Ambedkar Colony,
4th lane, Ongole.

..... PETITIONER

AND

1 The A.P.State Housing Corporation Ltd.,

Rep. Managing Director - Smt. Rani Kumidini, I.A.S.,
H.No.3-6-184, Urdu Galli,
Himayatnagar, Hyderabad-29.

2 P.Prasakam,
The A.P.State Housing Corporation Ltd.,

H.No. 3-6-184,
Urdu Galli, Himayatnagar, Hyderabad.

3 District Manager (H),
The A.P.State Housing Corporation Ltd.,

District Unit, Guntur.

4 District Manager,
A.P.State Housing Corporation Ltd., Ongole,
Prakasam.

5 The A.P.State Housing Corporation Ltd.,
H.No.3-6-184, Urdu Galli,
Himayatnagar, Hyderabad.

6 Smt. Rani Kumidini, I.A.S.,
H.No. 3-6-184, Urdu Galli,
Himayatnagar, Hyderabad-29.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to call for the records relating to the transfer order i.e. Proceedings No. A10/19877/96, dated 21/09/2001 and 18/10/2001 of the 1st respondent and the consequential order of transfer i.e., Proceedings Rc.No.246/96/H.2 dated 19/10/2001 of the 3rd respondent and issue a writ of Mandamus or any other order or direction in the nature of mandamus declaring the said order as unconstitutional and illegal and (a) issue a consequential direction to the 1st respondent to transfer me to the post of Attender in office of District Manager, A.P.State Housing Corporation Ltd., Ongole, Prakasam, (b) to direct the 1st respondent or 4th respondent to pay the salary of petitioner from 27/09/2001 to 31/10/2001, (c) to direct the respondents to pay exemplary costs of Rs.10,000/- to the petitioner, d) and to pass such other order/s as the Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: Mr. T.RAMAKRISHNA RAO

Counsel for the Respondents : Mr. D. PRAKASH REDDY

Senior Advocate

Mr. V.CH.NAIDU

The Court made the following :

ORAL ORDER:

This Writ Petition is filed seeking a Mandamus declaring the Proceedings dated 21-9-2001 and 18-10-2001 of the 1st respondent and the consequential order of transfer dated 19-10-2001 of the 3rd respondent as arbitrary and illegal and consequently (a) to direct the 1st respondent to transfer the petitioner to the post of Attender in the Office of District Manager, A.P.State Housing Corporation Ltd., Ongole, Prakasam (b) to direct the 1st respondent or 4th respondent to pay the salary of the petitioner from 27-09-2001 to 31-10-2001 and (c) to direct the respondents to pay exemplary costs of Rs.10,000/- to the petitioner. Further, on 13-7-2005, W.P.M.P.No.19445 of 2005 is filed seeking to amend the prayer, directing the 1st respondent to sanction leave for the period from 21-10-2001 to 10-12-2002 and pay salary for the said leave period and also to pay salary from 11-12-2002 to 18-1-2003 and to implement the pay revision as per G.O.Ms.No.24, dated 19-5-2001. In essence, the Writ Petition is filed questioning the transfer of the petitioner.

It is the case of the petitioner that he was working with the respondent-A.P.Housing Corporation Limited, Prakasam district. While so, he filed Writ Petition No.16765 of 1996 before this Court seeking regularization of his services in the post of Attender with effect from August,1995 when the services of his juniors were regularized in the post of Attender in accordance with G.O.Ms.No.212, Finance and Planning Department, dated 22-4-1994. This Court disposed of the said Writ Petition on 28-4-1997 directing the respondents to consider his case for regularization as Attender-cum-Watchman as per the said Governmental Order. Since the 1st respondent passed an Order dated 17-6-1997 in willful disobedience of the directions of this Court, he had filed Contempt Case No.1247 of 1997 and this Court directed to consider his case for regular absorption as and when vacancies arise, apart from leaving liberty to him to challenge the Order dated 17-6-1997. In the meanwhile, he came to know that a vacancy of Attender arose in the Office of the Deputy Executive Engineer, Kavali on 10-2-1998. Therefore, he had filed Contempt Application No.529 of 1998 in the said Contempt Case seeking a direction to regularize his services in the said clear vacancy of Attender. An interim order was passed on 2-9-1998 directing the respondents to regularize his services. However, his case was

not considered and Proceedings dated 17-9-1998 were issued by the 1st respondent in violation of the said orders of this Court dated 2-9-1998. When the same was brought to the notice of this Court, the 1st respondent issued another Proceeding dated 28-10-1998 regularizing his services as Attender-cum-Watchman. Accordingly, the District Manager, Prakasam district, Ongole by Proceedings dated 28-11-1998 had passed consequential orders. Thereafter, Contempt Case No.1247 of 1997 was closed on 2-12-1998 with an observation that if any action prejudicial to his rights was taken by the respondents, it will be always open to him to pursue the remedies available under the law. While so, he filed another Writ Petition being W.P.No.8793 of 1999 assailing the Proceedings dated 17-6-1997 and 28-10-1998 of the 1st respondent to the extent they were prejudicial to his interest, since he was appointed as a Watchman/Attender in stead of Attender. He had also filed W.P.M.P.No.15616 of 2000 in the said Writ Petition seeking a direction to the respondents to release family planning increments and also two annual increments. The said petition was ordered on 31-8-2000 and when the respondents failed to comply with the same, he filed another Contempt Case. He had also filed another W.P.M.P. for fixing his pay in the revised scale of pay as per G.O.Ms.No.24, Public Enterprises Department, dated 19-5-2001, which is pending.

According to the petitioner, since he had filed various Writ Petitions and Contempt Cases before this Court as narrated above, respondents 1 and 2 have developed malice against him and with a view to wreck vengeance against him, they had devised a plan to victimize and harass him by transferring to Hyderabad by Proceedings dated 21-9-2001 of the 1st respondent on the alleged administrative grounds and directed the District Manager, Prakasam district to relieve him with immediate effect. In the said Proceedings, he was described as Godown Watchman working in Prakasam District and not as Attender/Watchman. The said transfer is not only *mala fide* but also amounts to reduction in status. However, he joined at Hyderabad on 4-10-2001. At the Head Office, he was posted as Attender to the General Manager. He was not permitted to sign in the attendance register from the date he joined the Office on 4-10-2001 till 18-10-2001. Respondent No.2 scolded and rebuked him for filing Writ Petitions and Contempt Cases against the 1st respondent and pressurized him to withdraw Writ Petition No.8793 of 1999, which is pending. However, he made an oral request to transfer him to Ongole as his son aged about 8 years was getting fits and he is undergoing medical treatment in

Guntur Hospital. Subsequently, he gave a written application on 8-10-2001 personally to the 1st respondent requesting to transfer him to Prakasam or Guntur district in view of the health condition of his son. Respondent No.1 issued Proceedings dated 18-10-2001 transferring him to Guntur and the District Manager, Guntur was requested to admit him. Pursuant to the said Proceedings, he had reported for duty before the 1st respondent on 19-10-2001. Respondent No.3 by his Proceedings dated 19-10-2001 posted him as Godown Watchman at Gurazala Godown in Gurazala Section with effect from 20-10-2001. However, on the very same day, he applied for leave upto 28-10-2001 to enable to him to look after his ailing son. Thus the action of the 1st respondent in transferring him to Hyderabad is vindictive and actuated by malice. Further, his posting as Godown Watchman in Gurajala Section is contrary to the Service Rules and amounts to reduction in rank, since his services were regularized in the post of Attender-cum-Watchman. Therefore, the impugned Proceedings are arbitrary, illegal and deserve to be quashed.

A detailed counter affidavit has been filed by the 1st respondent denying the allegations made by the petitioner. Respondent No.1 was also impleaded in person as Respondent No.6. She filed counters in her official capacity as well as personal capacity. However, it was admitted in the counters that for 11 months, the petitioner did not obey the orders of his superiors; therefore, it was necessitated to transfer him to Hyderabad. But, when the facts were brought to the notice of the 1st respondent, the 1st respondent had transferred him to Guntur as per the request made by the petitioner himself, within 15 days from the date of joining at Hyderabad. Further, the contention of the petitioner that he ought not to have been transferred as a Watchman does not have any basis, as his services have been regularized in the cadre of Watchman/Attender. The employer can utilize the services of an employee in any place as and when required. The contention that posting the petitioner as Watchman amounts to reversion is absolutely baseless. The contention of the petitioner seems to be that he would work only as an Attender, but not as a Watchman. The petitioner was accommodated at Guntur at his own request and, therefore, he cannot have any grievance for the same. The other allegation as to malice was also denied flatly.

I have given my earnest consideration to the submissions made by the learned counsel on either side and perused the entire material made available on record.

Learned counsel for the petitioner contended that under the guise of transfer, the petitioner was posted as Godown Watchman in stead of Attender and that amounts to reduction in status and also is in the nature of punishment for the previous litigation he had pursued before this Court and, therefore, the same is actuated by malice. In support of his contentions, he relied upon various Judgments. The decisions relied upon by the learned counsel have no relevance to the facts of this case for the reasons furnished infra.

It is true that the petitioner, who is a Watchman-cum-Attender was transferred from Prakasam district to Hyderabad, since he was very negligent in his duties. However, as soon as the facts were brought to the notice of the 1st respondent, the petitioner was transferred to Guntur within 15 days, as per his request and finally he was posted as Godown Watchman at Gurajala Godown in Gurajala Section. Thereafter, he seems to have applied leave for 8 days and joined again. May be, the petitioner construed that since he was transferred from Ongole to Hyderabad, it was only due to his filing various Writ Petitions and Contempt Cases. If that is so, nothing prevented the respondents from retaining the petitioner at Hyderabad itself at least for one or two years. In fact, the respondents have taken very sympathetic view of the illness of the son of the petitioner and he was transferred from Hyderabad to Guntur within 15 days of his transfer to Hyderabad, at his request. Therefore, it cannot be said that the said act of transferring the petitioner from Ongole to Hyderabad is actuated by malice.

Learned counsel for the petitioner placed heavy reliance upon the Judgment of the Supreme Court reported in **E.P. ROYAPPA v. STATE OF TAMIL NADU** to show that there was *mala fide* on the part of the respondents and they have reduced the status of the petitioner. But, this decision has no relevance to the facts of the present case. The contention of the petitioner that in the guise of transfer, the petitioner was reduced in the status, since he was posted at Godown Watchman at Gurajala also may not be correct. By the very regularization proceedings, particularly in view of the directions of this Court, the petitioner was appointed as a Watchman/Attender. In fact, the petitioner is put on the scale applicable to the post of Attender. Thus the petitioner's services were utilized as Watchman. It is not the case

of the petitioner that his salary was reduced. The petitioner filed another Writ Petition No.8793 of 1999 insofar as his complaint as to reduction in status is concerned and the same is pending. Therefore, there is no necessity to go into this aspect.

From the above discussion, the action of the respondents neither can be called as punishment nor reduction in rank nor is there any *mala fides* on the part of the respondents in transferring the petitioner from Ongole to Hyderabad. In fact, the cause in the Writ Petition insofar as transferring the petitioner to Hyderabad is concerned, had become infructuous, since the respondents have transferred the petitioner from Hyderabad to Guntur at his own request and presently he has been posted at Nellore.

Insofar as the prayer for sanction of the leave for the periods from 21-10-2001 to 10-12-2001 and from 11-12-2002 to 18-1-2003 and to implement the pay revision as per G.O.Ms.No.24, dated 19-5-2001 and also fix the monthly salary of the petitioner is concerned, the cause has arisen subsequent to the filing of the Writ Petition. In the circumstances, the petitioner is directed to make a detailed representation in this regard, within a period of two weeks from the date of receipt of a copy of this order, to the respondents. On such representation, the respondents shall consider the same as per law and pass appropriate orders within a period of three months thereafter and communicate the same to the petitioner.

With the above direction, the Writ Petition is disposed of. No order as to costs.

19-7-2005

prk

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Managing Director - Smt. Rani Kumidini, I.A.S.,
A.P.State Housing Corporation Ltd.,

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Himayatnagar, Hyderabad-29.

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